

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAJUAN MARUICE LOVE,

Defendant-Appellant.

UNPUBLISHED

March 16, 2006

No. 258196

Wayne Circuit Court

LC No. 04-004766-01

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL KEITH BOWLER,

Defendant-Appellant.

No. 258262

Wayne Circuit Court

LC No. 04-004241-01

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant, Dajuan Maruice Love, was convicted of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Love was sentenced to life in prison without parole for his first-degree premeditated murder conviction, and two years in prison for his felony-firearm conviction. Defendant, Darryl Keith Bowler, was convicted of first-degree premeditated murder, MCL 750.316, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. Bowler was sentenced to life in prison without parole for his first-degree premeditated murder conviction, two years in prison for his felony-firearm conviction, and two to five years in prison for his felon in possession of a firearm conviction. Defendants appeal as of right. We affirm.

Love's first issue on appeal is that there was insufficient evidence presented to support his first-degree premeditated murder conviction. We disagree.

This Court reviews a sufficiency of the evidence claim de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When reviewing a claim that the evidence was insufficient to support the defendant's conviction, this Court reviews the evidence presented in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of the offense. *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993).

The elements of first-degree premeditated murder are (1) that the defendant killed the victim, and (2) that the killing was willful, deliberate, and premeditated. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). Furthermore, anyone who intentionally assists someone else in committing a crime is as guilty as the person who directly commits it and can be convicted of those crimes as an aider and abettor. *People v Coomer*, 245 Mich App 206, 223; 627 NW2d 612 (2001). To prove aiding and abetting of a crime, a prosecutor must show: (1) that the crime charged was committed by the defendant or some other person; (2) that the defendant performed acts or gave encouragement which assisted in the commission of the crime; and (3) that the defendant intended the commission of the crime or had knowledge of the other's intent at the time he gave the aid or encouragement. *People v Moore*, 470 Mich 56, 67; 679 NW2d 41 (2004). To be convicted of aiding and abetting first-degree murder, the defendant must have had the intent to kill or have given the aid knowing the principal possessed the intent to kill. *Id.* It is well settled that circumstantial evidence and reasonable inferences there from may constitute sufficient evidence to find all of the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). An aider and abettor's state of mind may be inferred from all the facts and circumstances. *People v Carines*, 460 Mich 750, 758; 597 NW2d 130 (1999). Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in the execution of the crime, and evidence of flight after the crime. *Id.* A defendant's intent "is a question of fact to be inferred from the circumstances by the trier of fact." *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995).

Here, Paul Richardson testified that he saw Love with a "long gun"/rifle and Bowler with a handgun. Richardson testified that Bowler was firing shots as he chased the victim and others toward the alley, and Francisco Diaz, who was stipulated as an expert in forensic pathology, testified that the exit wound of the bullet that killed the victim established that the fatal shot was fired from a handgun and not a rifle. Therefore, it is likely that Love was convicted for aiding and abetting.

As discussed *supra*, Richardson testified that Bowler had a handgun and was firing shots as he chased a group of people that included the victim. Furthermore, Diaz testified that the victim died from "a single gunshot to the back" from a handgun and the manner of death was homicide. Therefore, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that the charged crime was committed by Bowler. *Nowack, supra* at 400. Furthermore, approximately 40 minutes after Bowler had a verbal dispute with the victim, Dwayne Flack and Richardson, an armed Love, who was a close friend of Bowler, accompanied Bowler back to the scene of the aforementioned dispute and

stood by the side of Flack's suburban firing shots into the air as Bowler chased and fired shots at the victim and others. Moreover, Love fled from Officer Ollie McMillian when McMillian spotted him later that day on Hazlewood Street. Therefore, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that Love performed acts or gave encouragement to Bowler in the commission of the charged crime, and that Love had the intent to kill or knew that Bowler possessed the intent to kill at the time Love gave Bowler aid or encouragement. *Carines, supra* at 758.

Therefore, looking at the evidence in a light most favorable to the prosecution, a rational trier of fact could reasonably find that Love aided and abetted Bowler in first-degree premeditated murder. *Moore, supra* at 67. Thus, we conclude that there was sufficient evidence to convict Love of first-degree premeditated murder. *Johnson, supra* at 723.

Love's second and third issues on appeal are that the trial court committed plain error when it failed to instruct the jury that "aiders and abettors must have the necessary specific intent to be guilty" of the specific intent crime of first-degree premeditated murder, and when the trial court limited the application of its prior inconsistent statement instruction to Richardson's testimony. We conclude that these issues have been waived.

When defense counsel expresses satisfaction with the trial court's proposed and subsequent instructions to the jury, such approval constitutes a waiver that extinguishes any error regarding the instructions. *People v Hall (On Remand)*, 256 Mich App 674, 679; 671 NW2d 545 (2003). Here, defense counsel expressed his satisfaction with the jury instructions, and thus, these issues have been waived. *Id.*¹

Bowler's only issues on appeal are that the trial court erred when it denied his motion for a directed verdict and that there was insufficient evidence to support his first-degree premeditated murder conviction because there was insufficient evidence presented to establish that he acted with premeditation and deliberation.

When reviewing a trial court's decision on a motion for a directed verdict in a criminal case, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, up to the time the motion was made, viewed in the light most favorable to the prosecutor, could have persuaded a rational trier of fact that the essential elements of the crimes charged were proven beyond a reasonable doubt. *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002). Furthermore, when reviewing a claim that the evidence was insufficient to support a defendant's conviction, this Court reviews all of the evidence presented in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt. *Johnson, supra* at 723.

¹ Even if these issues were not waived, we believe they are without merit. The trial court properly instructed the jury on the elements for aiding and abetting as found in CJI 2d 8.1. The trial court also properly limited the prior inconsistent statement instruction to Richardson, because Flack never made a prior inconsistent statement.

To prove first-degree premeditated murder, a prosecutor must show that the defendant intentionally killed the victim and that the killing was premeditated and deliberate. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). Premeditation and deliberation characterize a thought process undisturbed by hot blood and require sufficient time to permit the defendant to reconsider his actions; they may be established by evidence of the prior relationship of the parties, the defendant's actions before the killing, the circumstances of the killing itself including the weapon used and the location of the wounds inflicted, and the defendant's conduct after the homicide. Circumstantial evidence and reasonable inferences from the evidence can be sufficient to prove the elements. *Id.*; *People v Plummer*, 229 Mich App 293, 299-301; 581 NW2d 753 (1998).

Here, as discussed *supra*, Richardson testified that Bowler had a handgun and fired shots with it as he chased a group of people that included the victim. Furthermore, Diaz testified that the victim died from “a single gunshot to the back” from a handgun and the manner of death was homicide. Therefore, viewing the evidence presented by the prosecutor up to the time Bowler made his motion for a directed verdict, in a light most favorable to the prosecution, a rational trier of fact could reasonably infer that Bowler intentionally killed the victim. *Plummer, supra* at 301. Moreover, Richardson testified that Bowler and Love, both of whom were armed, returned to the scene where Bowler had a prior altercation approximately 40 minutes earlier. Bowler’s and Love’s presence caused the victim and others to flee by foot. Bowler responded by chasing the group and firing shots. Thus, Bowler had at least two occasions to reconsider his actions, and therefore, viewing the evidence presented by the prosecutor, up to the time Bowler made his motion for a directed verdict, in a light most favorable to the prosecution, a rational trier of fact could reasonably infer that Bowler’s actions were premeditated and deliberate. *Id.* at 299-301. Thus, the trial court properly denied Bowler’s motion for a directed verdict. *Werner, supra* at 530.

Moreover, though defense witness Harmon Ulmer testified that Richardson told him he ran and jumped in some bushes, and thus did not see anything, this Court must afford deference to the jury’s special opportunity and ability to determine the credibility of witnesses, and thus, in this situation, this Court must afford deference to the jury’s decision to believe the conflicting evidence offered by Richardson in regard to the incident in question. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Thus, viewing all of the evidence presented in a light most favorable to the prosecution, a rational trier of fact still could have found that the essential elements of first-degree premeditated murder were met. Therefore, there was sufficient evidence to convict defendant of first-degree premeditated murder. *Johnson, supra* at 723.

Affirmed.

/s/ Bill Schuette
/s/ Christopher M. Murray
/s/ Pat M. Donofrio